

her work time, or where the purported "area of employment" does not include the location(s) where the worker spends most of his/her work time.

Required wage rate means the rate of pay which is the higher of:

(1) The actual wage for the specific employment in question; or

(2) The prevailing wage rate (determined as of the time of filing the application) for the occupation in which the H-1B nonimmigrant is to be employed in the geographic area of intended employment. The prevailing wage rate must be no less than the minimum wage required by Federal, State, or local law.

Secretary means the Secretary of Labor or the Secretary's designee.

Specialty occupation means an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree (or its equivalent) in the specific specialty as a minimum for entry into the occupation in the United States. The nonimmigrant in a specialty occupation shall possess the following qualifications: (1) Full state licensure to practice in the occupation, if licensure is required for the occupation; (2) completion of the required degree; or (3) experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty. 8 U.S.C. 1184(i). Determinations of specialty occupation and of nonimmigrant qualifications are made by INS.

Specific employment in question means the set of duties and responsibilities performed or to be performed by the H-1B nonimmigrant at the place of employment.

State means one of the 50 States, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

State Employment Security Agency (SESA) means the State agency designated under section 4 of the Wagner-Peyser Act to cooperate with OWS in the operation of the national system of public employment offices.

Strike means a labor dispute wherein employees engage in a concerted stoppage of work (including stoppage by reason of the expiration of a collective-

bargaining agreement) or engage in any concerted slowdown or other concerted interruption of operation.

United States worker ("U.S. worker") means an employee who is either

(1) A citizen or national of the United States, or

(2) An alien who is lawfully admitted for permanent residence in the United States, is admitted as a refugee under section 207 of the INA, is granted asylum under section 208 of the INA, or is an immigrant otherwise authorized (by the INA or by the Attorney General) to be employed in the United States.

Wage rate means the remuneration (exclusive of fringe benefits) to be paid, stated in terms of amount per hour, day, month or year (see definition of "Required Wage Rate").

[59 FR 65659, 65676, Dec. 20, 1994, as amended at 65 FR 80211, Dec. 20, 2000]

§ 655.720 Where are labor condition applications to be filed and processed?

(a) *Facsimile transmission (FAX)*. If the employer submits the LCA (Form ETA 9035) by FAX, the transmission shall be made to 1-800-397-0478 (regardless of the intended place of employment for the H-1B nonimmigrant(s)). (Note: the employer submitting an LCA via FAX shall not use the FAX number assigned to an ETA regional office, but shall use only the 1-800-397-0478 number designated for this purpose.) The cover pages to Form ETA 9035 (i.e., Form ETA 9035CP) should not be FAXed with the Form ETA 9035.

(b) *U.S. Mail*. If the employer submits the LCA (Form ETA 9035) by U.S. Mail, the LCA shall be sent to the ETA service center at the following address: ETA Application Processing Center, P.O. Box 13640, Philadelphia PA 19101 (regardless of the intended place of employment for the H-1B nonimmigrant(s)).

(c) *Electronic submission*. If the employer submits the LCA (Form ETA 9035E) by electronic transmission, the submission shall be made on the Department of Labor WEB page at www.lca.doleta.gov (regardless of the intended place of employment for the H-1B nonimmigrant(s)). The employer shall follow the instructions in the electronic submission process, which

§ 655.721

include the requirement that the employer shall print out and sign the LCA immediately after ETA's certification, shall maintain the "signed original" in its files, shall place a copy of the "signed original" in the public access file, and shall submit a copy of the "signed original" to the Immigration and Naturalization Service in support of the Form I-129 petition for the H-1B nonimmigrant. In the event that ETA implements the Government Paperwork Elimination Act (44 U.S.C.A. 3504 n.) and/or the Electronic Records and Signatures in Global and National Commerce Act (E-SIGN) (15 U.S.C. 7001-7006) for the submission and certification of the ETA 9035E, instructions will be provided (by public notice(s) and by instructions on the Department's WEB page) to employers as to how the requirements of these statutes will be met in the ETA-9035E procedures.

(d) All matters other than the processing of LCAs (e.g., prevailing wage challenges by employers) that are the responsibility of ETA are within the jurisdiction of the Regional Certifying Officers in the ETA regional offices identified in § 655.721.

[66 FR 63301, Dec. 5, 2001]

§ 655.721 What are the addresses of the ETA regional offices which handle matters other than processing LCAs?

(a) The Regional Certifying Officers in the ETA regional offices are responsible for administrative matters under this subpart other than the processing of LCAs (e.g., prevailing wage challenges by employers). (Note to paragraph (a): LCAs are filed by employers and processed by ETA only in accordance with § 655.720.)

(b) The ETA regional offices with responsibility for labor certification programs are—

(1) Region I Boston (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont): J.F.K. Federal Building, Room E-350, Boston, Massachusetts 02203. Telephone: 617-565-4446.

(2) Region I New York (New York, New Jersey, Puerto Rico, and the Virgin Islands): 201 Varick Street, Room

20 CFR Ch. V (4-1-02 Edition)

755, New York, New York 10014. Telephone: 212-337-2186.

(3) Region II (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia): Suite 825 East, The Curtis Center, 170 S. Independence Mall West, Philadelphia, Pennsylvania 19106-3315. Telephone: 215-861-5250.

(4) Region III (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee): Atlanta Federal Ctr., 100 Alabama St., NW, Suite 6M-12, Atlanta, Georgia 30303. Telephone: 404-562-2115.

(5) Region IV (Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming): 525 Griffin Street, Room 317, Dallas, Texas 75202. Telephone: 214-767-4989.

(6) Region V (Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin): 230 South Dearborn Street, Room 605, Chicago, Illinois 60604. Telephone: 312-353-1550.

(7) Region VI (Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, and Washington): P.O. Box 193767, San Francisco, California 94119-3767. Telephone: 415-975-4601.

(c) The ETA website at <http://ows.doleta.gov> will be updated to reflect any changes in the information contained in this section concerning the ETA regional offices.

[65 FR 80212, Dec. 20, 2000]

§ 655.730 What is the process for filing a labor condition application?

(a) *Who must submit labor condition applications?* An employer, or the employer's authorized agent or representative, which meets the definition of "employer" set forth in § 655.715 and intends to employ an H-1B nonimmigrant in a specialty occupation or as a fashion model of distinguished merit and ability shall submit an LCA to the Department.

(b) *Where and when is an LCA to be submitted?* An LCA shall be submitted by the employer to ETA in accordance with the procedure prescribed in § 655.720 no earlier than six months before the beginning date of the period of intended employment shown on the LCA. It is the employer's responsibility